IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

PIL WRIT PETITION NO.44 OF 2006

United Residents Association and another .. Petitioners
v/s.
The Principal,
Guru Nanak Khalsa College, Matunga, Mumbai
and others .. Respondents

Mr. C.U. Singh, senior counsel with Ms. Soma Singh i/by M/s. S. Udeshi & Co. for the petitioners.

Mr. P.V. Shah i/by Mr. S.P. Srivastava for the respondent Nos.1 and 2.

Mr. K.K. Singhvi, senior counsel with Ms. P.A. Purandare for the respondent Nos.3 to 5.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.
DATED : 27TH SEPTEMBER, 2006.

ORAL ORDER (Per R.M. Lodha, J.)

We heard the senior counsel and the counsel for the parties.

2. Plot Nos.473 to 475, 478, 488 and 491 to 496 of Dadar-Matunga (South) Estate having area 27,642 sq.yards is present in lease with M/s. Shiromani Gurudwara Prabandhak Committee (SGPC) for science college, office, godown, library, staff quarters, hostel and play ground etc. The grievance of the petitioners is with

regard to the illegal letting out of the play ground. According to the petitioners, the illegal letting out of the play ground is affecting the residence of the locality adversely. The problems faced by the residents of the locality are highlighted thus:

i) Noise pollution in a silence zone;

ii) Marriage parties after the reception throw food and dirt on the footpath which has a choking effect on the drainage system;

iii) Garbage thrown after the marriage parties has led to a severe mosquito problem and the cases of Dengue were also detected in the locality;

iv) The lane between VJTI and the subject property is narrow one way lane. The entrance for the marriage party is always from the same lane lead to traffic jams and chaos; and

v) Illegal chopping of trees and depletion of greenery.

3. On behalf of the Municipal Corporation of Greater Mumbai, affidavit has been filed and along therewith, the documents have been filed which show that the guidelines have

been framed by the Corporation permitting use of the play grounds and open places for marriages and other social and religious functions. The said guidelines read thus-

> "1. That the permission allowing use of the play grounds and open spaces for marriages and such other social and religious functions shall be on an annual basis for a period not exceeding one year at a time.
>
> 2. That the Institutions shall pay Rs.10,000/- per function or 30% of the amount recovered by them whichever is more during the year from the private parties for holding the functions in the office of Ward Officer (Estates). An account duly certified by a Chartered Accountant should be submitted to Estate Department every financial year.
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> 3. That National Sports Club of India will be allowed to use the Vallabhbhai Patel Stadium other than Sports activities i.e. marriage and other social functions at the payment of 50% of the net realisation amount for function day including ready and post days of the functions for erection and dismentlation of Mandap /Pendal/ Decoration etc.
>
> 4. As far as Educational Institutions are concerned, the use of play-grounds and open spaces for marriages and other social and religious functions shall be restricted to Sundays, Public Holidays and vacation period only.
>
> 5. that the Institution shall take sufficient precautionary measures so as not to

cause nuisance of any kind of the neighbourhood and specially during the period between 9.00 p.m. To 7.00 a.m.

6. That the Institution shall undertake to put off all the lights at 12.00 midnight.

7. That the Institutions shall undertake to ban the use of loud speakers, band, etc. for such functions though however, the request for light music may be considered.

8. That the Institutions shall undertake not to put up any temporary construction on the site, without prior permission of concerned Municipal Authorities.

9. That the Institutions shall undertake to obtain the requisite permission of Municipal Corporation of Greater Mumbai as also further concerned authorities.

10. That the Institutions shall agree to pay additional water charges, electricity charges, as also charges to meet the additional services required.

11. That the Institution shall pay security deposit of Rs.20,000/- for faithful compliance of the conditions.

12. That the Institution will have to execute a licence at their cost, for allowing user for the entire year, if necessary.

13. That the Institution shall agree to abide by all such other conditions as may be imposed by the Municipal Commissioner from time to time."

4. Additionally, it is stated in the affidavit that the

Corporation imposes the following additional conditions on the lessee:-

> "(i) The number of functions be restricted to 30 for college ground and 25 for quadrangle area in the financial year.
>
> (ii) The lessee, Khalsa College shall obtain prior permission of Asstt. Commissioner F/North and Police authorities for every function. The liability of obtaining permission for every function will be solely on the lessee.
>
> (iii) The lessee shall give registered undertaking for abiding with the condition of policy and conditions as above and especially to ban the use of loudspeaker/bank, to ban the use of bursting noise producing crackers, to keep the surrounding in good sanitary conditions and cleanliness from hygienic point of view etc.
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> (iv) Also the lessee shall obtain the undertaking from parties who are booking the ground for functions that they will ban the use of loudspeakers/bank, use of bursting noise producing crackers."

5. Needless to say that the grant of permission by the Municipal Corporation of Greater Mumbai to the lessee allowing use of the play ground and open spaces for the purposes of marriages and social and religious functions does not give licence to the lessee to breach the existing laws and cause inconvenience to the general public.

6. Upon consideration of the guidelines framed by the Municipal Corporation of Greater Mumbai, we find that some care has been taken in as much as the use of play grounds and open spaces of the educational institutions for marriages and other social and religious functions is restricted to Sundays, public holidays and vacation period. Obviously, the idea is that, while permitting the use of play grounds and open spaces for marriages and other social and religious functions, the education in the institution is not at all affected and the students are not put to any inconvenience. Additionally, we find that the Corporation has restricted number of functions on the college ground to 30 in a financial year and prior permission of the Municipal authority viz. Assistant Commissioner, F/North and the police authorities for such function is required to be obtained by the lessee. It needs no imphasis by us that the Corporation has also to keep in mind the width of the access road to such ground. If the approach road/lane is too narrow and is likely to cause chaos and traffic jam, the Corporation has to refuse permission for the use of the ground for marriage and such other social and religious functions.

7. Keeping these things in mind, we dispose of this writ petition (PIL) by the following order:-

i) The lessee (respondent No.2) and the Principal, Guru Nanak Khalsa College shall comply with all the terms and conditions incorporated in the permission of the Corporation allowing use of the playground

for marriages, other social and religious functions.

ii) The police authorities including the traffic authorities shall ensure that by the use of the play ground for marriage functions or other social and religious functions, free flow of traffic in the area is not affected. While granting such permission, the police authorities and the traffic department shall seek complete information with regard to the number of cars, vehicles and the guests likely to arrive at such function.

iii) The police authorities shall ensure compliance of all existing laws by the lessee.

iv) While granting permission, the Corporation shall also impose a condition upon the lessee that the cleanliness on the footpath etc. is maintained and the food, garbage etc. is not thrown outside the play ground.

v) Though it is already provided in one of the conditions that the lessee shall obtain the prior permission from the Assistant Commissioner, F/North, we direct that

while granting such permission, the Assistant Commissioner, F/North shall also seek the views of the Health Department of the Corporation.

vi) If lessee is found to have committed the breach of the conditions and the legal provisions, an appropriate action shall be taken against the lessee.

We order accordingly.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)